

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 5 Open Parties

**SPONSOR(S):** Pilon

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox	Cunningham
2) Business & Professional Regulation Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 856.015, F.S., makes it a second degree misdemeanor for a person who has control of a residence to allow an open house party to take place at such residence if any alcoholic beverage or drug is possessed or consumed at the residence by a minor and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence; and
- The person fails to take reasonable steps to prevent the consumption of the alcoholic beverage or drug.

The term "open house party" is defined as "a social gathering at a residence", and the term "residence" is defined as a "home, apartment, condominium, or other dwelling unit." The statute contains an exception stating that the criminal penalties do not apply to the use of alcoholic beverages at legally protected religious observances or activities.

The bill amends 856.015, F.S., to broaden the scope of criminal liability to include open parties that are held on "property" and defines this term as "residence, vacant property, or open acreage with or without a structure."

The bill creates a new exception specifying that criminal penalties do not apply to the consumption of alcoholic beverages at a restaurant or bar where a parent or adult accompanying the minor allows consumption by the minor.

The bill expands the application of s. 856.015, F.S., to include vacant property and open acreage with or without a structure. To the extent that this increases the number of defendants subject to the penalties of s. 856.015, F. S., the bill may have a negative jail bed impact on local governments.

The bill is effective on October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 856.015, F.S., makes it a second degree misdemeanor<sup>1</sup> for a person<sup>2</sup> who has control<sup>3</sup> of a residence to allow an open house party to take place at such residence if any alcoholic beverage or drug is possessed or consumed at the residence by a minor<sup>4</sup> and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence; and
- The person fails to take reasonable steps to prevent the consumption of the alcoholic beverage or drug.<sup>5</sup>

The term “open house party” is defined as “a social gathering at a residence,” and the term “residence” is defined as a “home, apartment, condominium, or other dwelling unit.”<sup>6</sup>

The statute contains an exception stating that the criminal penalties do not apply to the use of alcoholic beverages at legally protected religious observances or activities.

There are other statutes currently in effect that relate to consumption or possession of alcohol by a minor. For example, s. 827.04, F.S., entitled “Contributing to the delinquency or dependency of a child”, makes it a first degree misdemeanor for “a person to commit an act which causes or tends to cause, encourage, or contribute to a child becoming a delinquent or dependent child or a child in need of services.” Case law related to this statute has held that providing alcohol or drugs to a minor would trigger criminal liability under this statute.<sup>7</sup>

##### **Effect of the Bill**

The bill amends s. 856.015, F.S., to broaden the scope of criminal liability to include open parties that are held on property other than a residence. Specifically, the bill prohibits a person who has control of a property to allow an open party to take place at such property if any alcoholic beverage or drug is possessed or consumed by a minor, and:

- The person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the property; and
- The person fails to take reasonable steps to prevent the consumption of the alcoholic beverage or drug.

The bill defines the term “property” as a “residence, vacant property, or open acreage with or without a structure.” The bill replaces references to “open house party” with “open party” and defines “open party” as “a social gathering at any property.”

The bill creates a new exception specifying that criminal penalties do not apply to the consumption of alcoholic beverages at a restaurant or bar where a parent or adult accompanying the minor allows

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<sup>1</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 856.015(1), F.S., defines the term “person” as an individual 18 years of age or older.

<sup>3</sup> Section 856.015(1), F.S., defines the term “control” as the authority or ability to regulate, direct, or dominate.

<sup>4</sup> Section 856.015(1), F.S. defines the term “minor” as an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562.

<sup>5</sup> Second or subsequent violations of the statute are first degree misdemeanors. A first degree misdemeanor is punishable by up to one year in county jail and a 1,000 fine. Sections 775.082 and 775.083, F.S. It is also a first degree misdemeanor to if a violation causes or contributes to causing serious bodily injury or death to another as a result of the minor’s consumption of alcohol or drugs at the open house party. Section 856.015(4) and (5), F.S.

<sup>6</sup> Section 856.015(1), F.S.

<sup>7</sup> See *Kito v. State*, 888 So.2d 114, (Fla. 4th DCA, 2004). While the evidence was insufficient to uphold the conviction in this case, the Court is clear that a conviction for contributing to the delinquency of a minor can be sustained for an adult who knowingly allows a minor in their presence to possess or consume alcohol and/or drugs.

consumption by the minor. The bill defines the term "adult" as "an individual legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562."

The penalties remain unchanged.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 856.015, F.S., relating to open house parties.

Section 2. Provides an effective date of October 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The bill does not appear to have any impact on state revenues.

**2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The bill does not appear to have any impact on local government revenues.

**2. Expenditures:**

The bill expands the application of s. 856.015, F.S., to include vacant property and open acreage with or without a structure. To the extent that this increases the number of defendants subject to the penalties of s. 856.015, F. S., the bill may have a negative jail bed impact on local governments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Persons who have control of vacant property or open acreage with or without structures would now be subject to criminal penalties for violations of s. 856.015, F.S.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

- 1) Under (1)(h) "property" is defined as "residence, vacant property, or open acreage with or without a structure." This definition uses the term "property" within its definition of "property" which makes the definition unclear.
- 2) The new exception created by the bill provides that criminal penalties will not apply to use of alcoholic beverages at a restaurant or bar where a parent or adult accompanying minor allows the consumption. The definition of "property" that is provided in subsection (1) does not include a bar or restaurant, therefore, consumption that occurred at a bar or restaurant would not fall under the purview of s. 856.015, F.S., as drafted.
- 3) "Control" is defined as "the authority or ability to regulate, direct, or dominate." To date, this term has not been challenged as being vague. However, the bill expands the application of s. 856.015, F.S., to vacant property and open acreage with or without a structure. Proving that a person had "authority or ability to regulate or dominate" a vacant property or open acreage could be more challenging and provide an area ripe for litigation.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES